

Sponsor: _____
First Reading: 10/19/09
Second Reading: 11/02/09
Third Reading: 02/01/10
Ord. No.: 006-09

AN ORDINANCE TO AMEND THE TOWN CODE OF THE TOWN OF SMYRNA TO ADD A NEW CHAPTER 50. "PEDDLERS AND SOLICITORS"

WHEREAS, the Town Council of the Town of Smyrna is granted the authority in the Town Charter of the Town of Smyrna to provide for and preserve the health, safety, peace, good order, and public welfare of the Town and its inhabitants;

WHEREAS, the Town Council desires to protect the inhabitants of the Town from fraudulent business practices;

WHEREAS, the Town Council desires to protect the inhabitants of the Town from criminal activities associated with door-to-door sales and peddling;

WHEREAS, the Town Council desires to protect the privacy of the inhabitants of the Town when they are in their homes; and

WHEREAS, the Town desires to protect public safety on the streets and sidewalks of the Town;

BE IT HEREBY ENACTED by the Town Council of the Town of Smyrna, a majority thereof concurring in Council duly met, that a new Chapter 50 ("Peddlers and Solicitors") of the Town Code of the Town of Smyrna, be and hereby is adopted, as follows:

Section 1. Add a new Chapter 50 "Peddlers and Solicitors" as follows:

Chapter 50. PEDDLERS AND SOLICITORS

Sec. 50-1. Definition.

Peddler means any individual, whether a resident of this Town or not, traveling by foot, wagon, automobile, truck, or any other type of conveyance, from place to place, from house to house, or from street to street, or in a generally fixed location on public property, for the sale of, as well

as the selling, offering for sale or exchange for a donation, or taking or attempting to take orders for the sale of goods, wares and merchandise, or personal property of any nature whatsoever for future delivery, or for services to be furnished or performed at that time or in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale, or whether or not he is collecting advance payments on such sale. An individual's classification as a peddler under this definition shall be unaffected by the fact that the individual also, for himself or herself, or for another person, hires, leases, uses, or occupies any building, structure, tent, hotel room, lodging house, apartment, shop, office or any other place within this Town for the purpose of exhibiting samples and taking orders for future delivery. The term "peddler" shall include the terms "canvasser," "solicitor," "transient or itinerant merchant or vendor" and "transient or itinerant photographer." Peddler shall not include wholesale sales representatives dealing with retail businesses within the Town.

Public property means any parcel of land or any street, sidewalk, alley, or right-of-way owned or controlled by the Town of Smyrna.

Roadway means any public street that has more than two main travel lanes or a speed limit of 25 miles per hour or greater.

Sec. 50-2. Exemptions.

The provisions of this chapter shall not apply to the following:

- (1) Sheriffs, constables, bona fide assignees, receivers or trustees in bankruptcy or other public officers selling goods, wares and merchandise according to law;
- (2) Individuals selling fruits or vegetables which were produced on land that is owned or controlled by the individual.
- (3) An attempt to enlist support for or against a particular religion, political party, candidate, cause or issue;
- (4) Solicitations, sales, or distributions made by a charitable organization recognized as tax exempt under the Internal Revenue Code, a religious organization recognized

as such under the laws of the State of Delaware, or an organization authorized by any school within the Smyrna School District.

(5) Individuals leaving written information, including flyers, leaflets, and brochures, or other forms of advertising, for non-commercial purposes; and

(6) Individuals under 14 years of age.

Sec. 50-3. Registration required.

All peddlers shall register with the Code Enforcement Officer before engaging in any activities described in Section 50-1. Such registration shall be made at least twenty-four (24) hours, excluding weekends and holidays, prior to the date a peddler seeks to begin conducting activities described in Section 50-1.

(1) *Information required.* Every person desiring to act as a peddler as defined in this chapter shall first register, under oath or affirmation, with the Code Enforcement Officer. Upon such application, such person shall provide the following:

(a) the applicant's name, age, and address;

(b) a copy of a government-issued photo I.D.;

(c) the applicant's previous criminal record, if any;

(d) the name and address of the person for whom the applicant works and a letter appended to the application authorizing the applicant to represent the firm the applicant purports to represent, if any;

(e) the type or types of article, device, subscription, contribution, service or contract which he/she desires to sell or for which he/she wishes to solicit within the Town;

(f) the type of vehicle the applicant uses, if any, and its registration number;

(g) the name, address and title of a company officer upon whom process or other legal notice may be served, if the applicant is a corporation or company or is associated with a corporation or company;

(h) a statement as to whether or not the applicant has been convicted of a felony or misdemeanor within five years preceding the date of the application and the nature of the offense or violation (excluding traffic offenses); and

(i) a statement as to whether or not the applicant has had a civil judgment for fraud, deceit, or misrepresentation entered against him or her within five years preceding the date of the application.

Where an individual makes application for himself or herself and one or more additional individuals, all applicable personal information specified above shall be included for each prospective peddler who will be operating under the license. Only one license shall be issued per application, but separate identification badges shall be issued for each peddler. No license or identification badge issued under this chapter shall be transferable from one individual to another. No individual shall be permitted to operate as a peddler without a valid identification badge that has been issued pursuant to a valid license.

(2) **Issuance of license.** Upon registering with the Town, the Town shall have twenty-four (24) hours, excluding weekends and holidays, to determine whether to issue a license. The Town may refuse to issue a license and/or an identification badge for a specific applicant for the following reasons:

(a) An applicant provided false information in the application;

(b) An applicant or any prospective peddler under the applicant's license has been convicted of a felony or misdemeanor involving a sex offense, trafficking in controlled substances, burglary, theft, or any violent acts against person or property, within five years preceding the application date; or

(c) A civil judgment for fraud, deceit, or misrepresentation was entered against the applicant or any prospective peddler under the applicant's license within five years preceding the date of application.

(3) **License duration and content.** Each peddler operating under a license issued by the Town shall be permitted to peddle within the Town for the licensed period beginning on

the date such license is issued. Such license shall not be transferable. Each license shall expire December 31 at 11:59 p.m. of the year in which it was issued, with the exception that any license issued in the month of December shall expire December 31 at 11:59 p.m. of the year following the year in which the license was issued. Each license issued shall contain the following: the permit number, the fee paid, the issue date, the expiration date, and the name, signature, and employer of each peddler who will be operating under the license.

(4) *Identification badge content.* Each peddler listed on a license shall be issued an identification badge, issued in card form, and containing the following information: the peddler license number, and the peddler's name, age, weight, address, employer, and signature.

(5) *Display of identification badge.* Every solicitor or peddler shall, at all times while engaged in peddling in the Town, carry a Town-issued identification badge upon his or her person and shall exhibit such evidence upon request to all police officers, town officials and citizens.

(6) *Fees.* No license shall be issued under this chapter except upon payment of a fee of \$50.00, and the full fee shall be required irrespective of when during the year a license is issued. For each additional applicant listed on an application as a prospective peddler beyond the first applicant, an additional fee of \$15 shall be required.

Sec. 50-4. Entrance to premises restricted.

It shall be unlawful for any peddler to enter upon any private property when such property is included in the Town's "No Solicitation Registry" or has a sign posted stating "No Peddlers Allowed" or "No Solicitations Allowed" or other words to such effect.

Sec. 50-5. Refusing to leave premises.

Any peddler who enters upon premises owned, leased, or rented by another and refuses to leave such premises after having been notified by the owner or occupant of such premises, or his agent, to leave the same and not return to such premises shall be subject to penalty.

Sec. 50-6. False or fraudulent statements.

It shall be unlawful for any peddler to make false or fraudulent statements concerning the goods, wares, merchandise or services for the purpose of inducing another to purchase the same.

Sec. 50-7. Hours of operation.

It shall be unlawful for any peddler to engage in the business of peddling within the Town between the hours of **9:00 p.m. and 9:00 a.m.**, except by specific appointment with or invitation from the prospective customer.

Sec. 50-8. Peddling restrictions.

(1) *Prohibited Areas.* No peddler shall solicit or do business of any nature whatsoever in the following areas:

(a) public property in any commercial zone of the Town as defined and described in Appendix A ("Zoning Ordinance") to this Code pertaining to zoning and the zoning map of the Town;

(b) any location on private property except at the property's primary entrance.

(c) private property located in any commercial zone as defined in this section without obtaining prior written approval of the private property owner; and

(d) within 200 feet of any church or place of worship, or any place occupied exclusively as a public or private school or for school purposes.

(2) *Prohibited Activities.*

(a) No peddler shall permit his/her cart, wagon or vehicle to stand on any public highway within 200 feet of any church or place of worship, or any place occupied exclusively as a public or private school or for school purposes.

(b) It shall be unlawful for a person to stand or sit in a roadway, roadway median, or the shoulder of a roadway

anywhere within the Town to solicit money, or to distribute any material to the occupant of any motor vehicle.

Sec. 50-9. Records; supervision of license holders.

The Code Official shall keep a record of all registrations made under this chapter, and the Code Official shall supervise the activities of all peddlers included in such licenses.

Sec. 50-10. Revocation of license; hearing.

(1) *Revocation of license.* Any license issued hereunder may be revoked by the Code Enforcement Officer upon the failure of any peddler operating under the license to comply with the standards of conduct established herein or upon ascertainment that any peddler operating under the license has made any false statements in the application for the license hereunder or upon any peddler operating under the license being arrested and convicted of a felony or misdemeanor involving a sex offense, trafficking in controlled substances, burglary, theft, or any violent acts against persons or property after being issued a license or having a civil judgment for fraud, deceit, or misrepresentation entered against any peddler operating under the license . If a license is revoked, all peddlers operating under the license shall be prohibited from peddling in the Town.

(2) *Hearing.* Any person who was denied a license or whose license has been revoked shall be entitled to appear, with counsel if desired, before the Town Council at a regular or special meeting and be heard on behalf of a request for issuance or reinstatement of said license.

Sec. 50-11. No solicitation registry.

(1) Any resident or business of the Town may place his/her/its address on the Town's "No Solicitation Registry" by completing a form provided by the Town.

(2) The "No Solicitation Registry" will be provided to peddlers upon their receiving a license.

Sec. 50-12. Penalty.

Any person violating any of the provisions of this Chapter shall be guilty of a criminal violation and upon conviction shall be subject to a fine of not less than \$25.00 nor more than \$500.00 and/or imprisonment for not more than ten (10) days.

Section 2. This Ordinance shall become effective on the ___ day of _____, 2010.

SYNOPSIS

This ordinance requires peddlers to register at Town Hall prior to engaging in peddling or solicitation activities in the Town. The provisions of this ordinance do not apply to religious or charitable organizations, political speech, the distribution of non-commercial handbills, farmers selling products they have grown, individuals under 14 years of age, public officers selling items according to law, and wholesale sales representatives dealing with retail businesses in the Town. Registration must occur twenty-four (24) hours, excluding weekends and holidays, before peddling. The registration application includes, among other things, the applicant's name, age, address, photo ID, criminal history, employer, description of products that will be peddled, and statement about past civil judgments. The same information must be included for prospective peddlers who are listed on the application. Only one license will be issued per application, but an identification badge will be issued for each peddler covered by the application. The badge must be carried by peddlers at all times while engaging in peddling activities. The Town may refuse to issue a license or an identification badge for a prospective peddler where the application included false information or the applicant or a prospective peddler under the application has been convicted of certain crimes included in the ordinance within the past five years or has had a civil judgment entered for fraud, deceit, or misrepresentation within the past five years. Each license shall expire at the end of the year in which it was issued. Each license requires a base fee of \$50 and an additional fee of \$15 for each prospective peddler to be covered by the license beyond the original applicant. This ordinance creates a "No Solicitation Registry." Residents and businesses

voluntarily elect to be listed on the registry and peddlers may not visit anyone listed on the registry. The ordinance prohibits peddling from 9:00 pm to 9:00 am. Peddlers may not peddle in the Town's commercial zones except on private property with the property owner's permission. Peddlers may not peddle within 200 feet of any church or school, and peddlers may not peddle in roadways. An entire license may be revoked if any peddler covered by the license violates the ordinance, is arrested for certain crimes, or has a civil judgment for fraud, deceit, or misrepresentation entered against him or her. Anyone who violates this ordinance is guilty of a criminal violation and may be fined between \$25 and \$500 and/or be imprisoned for up to 10 days.

This will certify that this is a true and correct copy of the Ordinance duly adopted by the Town Council of the Town of Smyrna at its regular Council meeting on _____, 2010.

ATTEST:

Council Secretary

Mayor

This shall certify that the title and synopsis of this Ordinance was published in "The Smyrna Times" on _____, 2010 and posted at the Town Hall on _____, 2010.

So Certifies:

Town Clerk

This shall certify that the title, effective date and synopsis of this Ordinance was published in "The Smyrna Times" on _____, 2010 and posted at the Town Hall on _____, 2010.

So Certifies:

Town Manager

